

function is due to the action or inaction of a bureau, the evaluation report will note the deficiency and the appropriate Department official will be notified of the need for corrective action. The review of the Secretary's trust functions shall be based on the standards in this subpart, other applicable law, and other Federal law.

**§ 1000.362 What are the consequences of a finding of imminent jeopardy in the annual trust evaluation?**

(a) A finding of imminent jeopardy triggers the Federal reassumption process (see subpart M of this part), unless the conditions in paragraph (b) of this section are met.

(b) The reassumption process will not be triggered if the Secretary's designated representative determines that the Tribe/Consortium:

(1) Can cure the conditions causing jeopardy within 60 days; and

(2) Will not cause significant loss, harm, or devaluation of a trust asset, natural resources, or the public health and safety.

**§ 1000.363 What if the trust evaluation reveals problems that do not rise to the level of imminent jeopardy?**

Where problems not rising to the level of imminent jeopardy are caused by Tribal action or inaction, the conditions must be:

(a) Documented in the annual trust evaluation report;

(b) Reported to the Secretary; and

(c) Reported in writing to:

(1) The governing body of the Tribe; and

(2) In the case of a Consortium, to the governing body of each Tribe on whose behalf the Consortium is performing the trust functions.

**§ 1000.364 Who is responsible for corrective action?**

The Tribe/Consortium is primarily responsible for identifying and implementing corrective actions for matters contained in the AFA, but the Department may also suggest possible corrective measures for Tribal consideration.

**§ 1000.365 What are the requirements of the review team report?**

A report summarizing the results of the trust evaluation will be prepared

and copies provided to the Tribe/Consortium. The report must:

(a) Be written objectively, concisely, and clearly; and

(b) Present information accurately and fairly, including only relevant and adequately supported information, findings, and conclusions.

**§ 1000.366 Can the Department conduct more than one trust evaluation per Tribe per year?**

Trust evaluations are normally conducted annually. When the Department receives information of a threat of imminent jeopardy to a trust asset, natural resource, or the public health and safety, the Secretary, as trustee, may conduct a preliminary investigation. If the preliminary investigation shows that appropriate, sufficient data are present to indicate there may be imminent jeopardy, the Secretary's designated representative:

(a) Will notify the Tribe/Consortium in writing; and

(b) May conduct an on-site inspection upon 2 days' advance written notice to the Tribe/Consortium.

**§ 1000.367 Will the Department evaluate a Tribe's/Consortium's performance of non-trust related programs?**

This depends on the terms contained in the AFA.

## Subpart P—Reports

**§ 1000.380 What is the purpose of this subpart?**

This subpart describes what reports are developed under self-governance.

**§ 1000.381 How is information about self-governance developed and reported?**

Annually, the Secretary will compile a report on self-governance for submission to the Congress. The report will be based on:

(a) Audit reports routinely submitted by Tribes/Consortia;

(b) The number of retrocessions requested by Tribes/Consortia in the reporting year;

(c) The number of reassumptions that occurred in the reporting year;

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(d) Federal reductions-in-force and reorganizations resulting from self-governance activity;

(e) The type of residual functions and amount of residual funding retained by BIA; and

(f) An annual report submitted to the Secretary by each Tribe/Consortium as described in

### **§ 1000.382 What may the Tribe's/Consortium's annual report on self-governance address?**

(a) The Tribe's/Consortium's annual self-governance report may address:

(1) A list of unmet Tribal needs in order of priority;

(2) The approved, year-end Tribal budget for the programs and services funded under self-governance, summarized and annotated as the Tribe may deem appropriate;

(3) Identification of any reallocation of trust programs;

(4) Program and service delivery highlights, which may include a narrative of specific program redesign or other accomplishments or benefits attributed to self-governance; and

(5) At the Tribe's/Consortium's option, a summary of the highlights of the report referred to in paragraph (a)(2) of this section and other pertinent information the Tribes may wish to report.

(b) The report submitted under this section is intended to provide the Department with information necessary to meet its Congressional reporting responsibilities and to fulfill its responsibility as an advocate for self-governance. The Tribal reporting requirement is not intended to be burdensome, and Tribes are encouraged to design and present the report in a brief and concise manner.

## **Subpart Q—Miscellaneous Provisions**

### **§ 1000.390 How can a Tribe/Consortium hire a Federal employee to help implement an AFA?**

If a Tribe/Consortium chooses to hire a Federal employee, it can use one of the arrangements listed in this section:

(a) The Tribe can use its own Tribal personnel hiring procedures. Federal employees hired by the Tribe/Consortium

are separated from Federal service.

(b) The Tribe can “direct hire” a Federal employee as a Tribal employee. The employee will be separated from Federal service and work for the Tribe/Consortium, but maintain a negotiated Federal benefit package that is paid for by the Tribe/Consortium out of AFA program funds; or

(c) The Tribe can negotiate an agreement under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable Federal law. The employee will remain a Federal employee during the term of the agreement.

### **§ 1000.391 Can a Tribe/Consortium employee be detailed to a Federal service position?**

Yes, under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable law, when permitted by the Secretary.

### **§ 1000.392 How does the Freedom of Information Act apply?**

(a) Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable Federal law.

(b) At the option of the Tribe/Consortium under section 108 of the Pub. L. 93–638, except for previously provided copies of Tribe/Consortium records that the Secretary demonstrates are clearly required to be maintained as part of the record keeping system of the Department of the Interior, records of the Tribe/Consortium shall not be considered Federal records for the purpose of the Freedom of Information Act.

(c) The Freedom of Information Act does not apply to records maintained solely by Tribes/Consortia.

### **§ 1000.393 How does the Privacy Act apply?**

At the option of the Tribe/Consortium, section 108(b) of Pub. L. 93–638, as amended, provides that records of the Tribe/Consortium must not be considered Federal records for the purposes of the Privacy Act.